

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 In re

Case No.
02-13533(AJG)

4 WORLDCOM, INC., et al,

New York, New York

July 10, 2007

5 Reorganized Debtors.

10:12 a.m.

6 DIGITALLY RECORDED PROCEEDINGS

7 10:00 STATUS CONFERENCE re Amended Motion of Parus Holdings,
8 Inc. For Relief Resulting from the Debtors' Spoliation of
9 Evidence. Opposition filed.

10 B E F O R E:

11 THE HONORABLE ARTHUR J. GONZALEZ
12 United States Bankruptcy Judge

13 A P P E A R A N C E S:

14 STINSON MORRISON HECKER LLP
15 Special Counsel for Reorganized Debtors WorldCom
16 and Intermedia
17 1201 Walnut Street
18 Kansas, Missouri 64106

19 BY: ALLISON MURDOCK, ESQ. (via telephone)

20 FOLEY & LARDNER LLP
21 Attorneys for Parus Holdings
22 777 East Wisconsin Avenue
23 Milwaukee, Wisconsin 53202

24 BY: JILL MURCH, ESQ. (via telephone)

25 DEBORAH HUNTSMAN, Court Reporter
26 (212) 608-9053 (718) 774-2551 (917) 723-9898
27 Proceedings Recorded by Electronic Sound Recording,
28 Transcript Produced by Court Reporter

Proceedings

2

1 JUDGE GONZALEZ: Please be seated.

2 This is Judge Gonzalez.

3 MS. MURDOCK: Your Honor, Allison Murdock on behalf of
4 the Debtors.

5 MS. MURCH: Your Honor, Jill Murch on behalf of Parus
6 Holdings.

7 JUDGE GONZALEZ: All right. Sorry to keep you both
8 waiting. We are here as a follow-up to the conference call on
9 a status conference as to how we are going to proceed, and if
10 we are going to proceed with the spoliation motion.

11 So go ahead. I'll hear first from the Debtors.

12 MS. MURDOCK: Your Honor, Allison Murdock. It was not
13 Debtors' intention to raise issues with respect to finality.
14 I have conferred with my client, and Debtors will amend their
15 motion seeking permission to partially withdraw their claim
16 objection to remove the language that gave you pause with
17 respect to Debtors' reservation of rights to refile the claim
18 objection. If the summary judgement ruling is appealed and
19 any part of the case is sent back, then Debtors will have
20 whatever rights they have at that time and we can cross that
21 bridge if and when we ever come to it. At this time, Debtors
22 will amend the motion to take out the language seeking a
23 determination now that they would have a reservation of rights
24 to refile that claim objection.

25 JUDGE GONZALEZ: All right. Parus Holdings?

Proceedings

3

1 MS. MURCH: Your Honor, Jill Murch. I'm here on
2 behalf of Parus Holdings.

3 That is fine. If the Debtors want to go ahead and
4 amend that motion, we have no problem with that.

5 JUDGE GONZALEZ: All right. Amend the motion, and I
6 would suggest that, if you show it to Parus Holdings and they
7 have no objection to that withdrawal, I will enter that order;
8 where are we then with the claim?

9 MS. MURDOCK: Your Honor, Allison Murdock. If we
10 enter that order, I think that order then takes care of all of
11 those pending motions. There would be no need to consider the
12 amended spoliation motion, Debtors' request for a Rule
13 30(b)(6) deposition, or Debtors' request to make an offer of
14 judgment under 7068. I think that would resolve everything
15 that is left. The only thing otherwise that would need to be
16 decided is that Debtors have filed a notice of presentment on
17 the summary judgment ruling and Parus did object. But that
18 would be the only thing that I believe would still be left to
19 be resolved, if the motion to partially withdraw the claim
20 objection were granted.

21 MS. MURCH: Your Honor, this is Jill Murch on behalf
22 of Parus Holdings. The only thing that we ask is that the
23 Court not rule on the spoliation motion or the amended
24 spoliation motion at this time. It is at this point that
25 Parus Holdings believes it is premature that you consider any

Proceedings

4

1 rights they have.

2 So in the event that there may be an appeal in the
3 future, and if there is a reversal, we would just ask that you
4 hold those as pending motions and just not rule on them at
5 this time.

6 JUDGE GONZALEZ: Maybe it is better that we all think
7 about it, but it seems to me that -- assume I relatively
8 quickly resolve whatever dispute there is to the order
9 regarding the opinion, you effectively have all the issues in
10 the case, at least on their face, resolved, and you have
11 whatever appellate rights you have.

12 If the case gets sent back and WorldCom argues that
13 they have some right to dispute the damage calculation, and,
14 if I were to disagree with them, then the spoliation motion
15 and everything else goes away anyway. It seems to me that, if
16 it comes back to me on a reversal and a remand, that whatever
17 issues are then before me, if it's relevant to deal with
18 spoliation, you would deal with it in the context of a new
19 motion. I don't see why the spoliation motion and everything
20 else just isn't withdrawn. Why would it be carried forward,
21 if the claims adjudication process is really concluded, but
22 for any reversal and remand?

23 MS. MURCH: Judge, I would like to preserve the
24 ability to argue one of the bases that, if an appeal were to
25 be taken, is a ruling on spoliation. We would like to

Proceedings

5

1 preserve that as an issue.

2 At the commencement of the cases one of the concerns
3 we had was that spoliation would not be ruled on prior to an
4 adjudication of the summary judgment motion. So that is a
5 concern that we would have, that which cannot be ruled on at
6 this point.

7 JUDGE GONZALEZ: As I said before, it doesn't make any
8 sense to me. There is nothing left before me. How could I
9 have an open motion on a claims adjudication, and, unless I am
10 missing something, the claim has been fully adjudicated.
11 There is a liability basis established and there is a damage
12 amount for that liability. It is over. It is over until
13 someone sends it back to me and says "you are wrong," and then
14 once that happens, everything else opens itself back up again?

15 MS. MURCH: Your Honor, we just want to preserve a
16 ruling on the pending spoliation motion.

17 JUDGE GONZALEZ: It is moot. Once the objection to
18 the use of which damage calculation applies is withdrawn,
19 there is nothing left for the spoliation motion unless my
20 opinion and determination is reversed.

21 MS. MURCH: Your Honor, I would be glad to work out
22 the terms of an order with Ms. Murdock, an order that would
23 resolve all of these issues and present it to the Court. If
24 an appeal is taken and if Your Honor's opinion were to be
25 reversed, then Parus would want the ability to refile the

Proceedings

6

1 amended spoliation motion at that time.

2 JUDGE GONZALEZ: All right. Try to work it out. Both
3 of you, keep in mind -- and I know you are advocates for your
4 clients, and rightfully so protecting their interests -- you
5 have to still look at this from a practical standpoint. If
6 there is nothing left before me, what rights are you
7 preserving by keeping motions open?

8 MS. MURDOCK: Your Honor, Allison Murdock. I can see
9 we have a dispute coming down the road on this, because the
10 purpose of our withdrawing the claim is so that we don't have
11 open motions because all of those pending motions, including
12 the ones that Debtors have filed, are moot, if the order is
13 granted permitting partial withdrawal of the claim objection.

14 We can try to work something out with Parus Holdings,
15 but I don't contemplate that procedurally we will have the
16 ability to present an order to the Court that provides
17 anything other than that these pending motions, including
18 Debtors' pending motions, are moot in light of an order
19 granting partial withdrawal of the claim objection.

20 JUDGE GONZALEZ: Schedule it all. I will deal with
21 both of you in person. File the amended motion to withdraw.
22 We will address all the issues at one hearing, and see where
23 that takes us.

24 MS. MURCH: Your Honor, this is Jill Murch. I do
25 believe we can work something out here. I just want to have

Proceedings

7

1 the ability to consult with my client first. I do believe we
2 can reach a mutually satisfactory resolution with the Debtors
3 and the Court. I just need a little bit of time to talk to my
4 client and hammer that out.

5 JUDGE GONZALEZ: All right, thank you.

6 MS. MURDOCK: Thank you, Your Honor.

7 JUDGE GONZALEZ: All right. Good day.

8 MS. MURDOCK: Thank you. Bye.

9 JUDGE GONZALEZ: All right. The next matter in
10 WorldCom, I believe, commences at 12:00 p.m. I will return to
11 the bench at that time.

12 (Whereupon, from 10:20 a.m. to 12:04 p.m. a recess was
13 taken.)

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1 C E R T I F I C A T E

2 STATE OF NEW YORK)
3 COUNTY OF NEW YORK) : SS:

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5 I, DEBORAH HUNTSMAN, a Shorthand Reporter and
6 Notary Public within and for the State of New York, do hereby
7 certify:

8 That the within is a true and accurate
9 transcript from the official electronic sound recording of the
10 proceedings held on the 10th day of July, 2007.

11 I further certify that I am not related by blood
12 or marriage to any of the parties and that I am not interested
13 in the outcome of this matter.

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 this 18th day of July, 2007.

16
17
18 DEBORAH HUNTSMAN
19 DEBORAH HUNTSMAN

20 NOTE FILE BY MOSES BENASHER

21 PRELIMINARY TRANSCRIPT DELIVERED VIA E-MAIL 7/15/2007

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0	4:16, 4:18, 4:25, 5:4, 5:9, 5:11, 5:15, 6:5, 6:9, 7:2, 7:3, 7:12, 8:5, 8:8 A [4] - 1:13, 8:1 a.m [2] - 1:5, 7:12 ability [4] - 4:24, 5:25, 6:16, 7:1 about [1] - 4:7 accurate [1] - 8:8 address [1] - 6:22 adjudicated [1] - 5:10 adjudication [3] - 4:21, 5:4, 5:9 advocates [1] - 6:3 again [1] - 5:14 ahead [2] - 2:11, 3:3 al [1] - 1:4 all [7] - 3:10, 4:6, 4:9, 5:23, 6:11, 6:20, 6:22 All [7] - 2:7, 2:25, 3:5, 6:2, 7:5, 7:7, 7:9 ALLISON [1] - 1:17 Allison [4] - 2:3, 2:12, 3:9, 6:8 am [3] - 5:9, 8:11, 8:12 amend [3] - 2:14, 2:22, 3:4 Amend [1] - 3:5 Amended [1] - 1:7 amended [4] - 3:12, 3:23, 6:1, 6:21 amount [1] - 5:12 an [11] - 3:13, 4:2, 4:24, 5:1, 5:3, 5:9, 5:22, 5:24, 6:16, 6:18 and [35] - 1:15, 2:9, 2:14, 2:18, 2:20, 2:21, 3:3, 3:5, 3:6, 3:17, 4:3, 4:4, 4:10, 4:12, 4:13, 4:15, 4:16, 4:19, 4:22, 5:9, 5:11, 5:13, 5:20, 5:23, 5:24, 6:3, 6:4, 6:22, 7:3, 7:4, 8:5, 8:6, 8:8, 8:12 any [5] - 2:19, 3:25, 4:22, 5:7, 8:12 anything [1] - 6:17 anyway [1] - 4:15 appeal [3] - 4:2, 4:24, 5:24 appealed [1] - 2:18 appellate [1] - 4:11 applies [1] - 5:18 are [10] - 2:8, 2:9, 2:10, 3:8, 4:17, 5:13, 6:3, 6:6, 6:12, 6:18 argue [1] - 4:24 argues [1] - 4:12	ARTHUR [1] - 1:11 as [4] - 2:8, 2:9, 4:4, 5:1 As [1] - 5:7 ask [2] - 3:22, 4:3 assume [1] - 4:7 at [11] - 2:20, 3:24, 4:4, 4:10, 5:5, 6:1, 6:5, 6:22, 7:10, 7:11 At [2] - 2:21, 5:2 Attorneys [1] - 1:19 Avenue [1] - 1:19 away [1] - 4:15	C	deal [3] - 4:17, 4:18, 6:20 DEBORAH [4] - 1:23, 8:5, 8:18, 8:19 Debtors [11] - 1:5, 1:15, 2:4, 2:11, 2:14, 2:19, 2:21, 3:3, 3:16, 6:12, 7:2 Debtors' [6] - 1:8, 2:13, 2:17, 3:12, 3:13, 6:18 decided [1] - 3:16 DELIVERED [1] - 8:21 deposition [1] - 3:13 determination [2] - 2:23, 5:20 did [1] - 3:17 DIGITALLY [1] - 1:6 disagree [1] - 4:14 dispute [3] - 4:8, 4:13, 6:9 DISTRICT [1] - 1:2 do [3] - 6:24, 7:1, 8:6 doesn't [1] - 5:7 don't [3] - 4:19, 6:10, 6:15 down [1] - 6:9
1	B	B [1] - 1:10 back [5] - 2:19, 4:12, 4:16, 5:13, 5:14 BANKRUPTCY [1] - 1:1 Bankruptcy [1] - 1:12 bases [1] - 4:24 basis [1] - 5:11 be [13] - 2:1, 3:11, 3:15, 3:18, 3:19, 4:2, 4:20, 4:25, 5:3, 5:5, 5:21, 5:24 because [2] - 6:9, 6:11 been [1] - 5:10 before [4] - 4:17, 5:7, 5:8, 6:6 behalf [4] - 2:3, 2:5, 3:2, 3:21 believe [4] - 3:18, 6:25, 7:1, 7:10 believes [1] - 3:25 BENASHER [1] - 8:20 bench [1] - 7:11 better [1] - 4:6 bit [1] - 7:3 blood [1] - 8:11 Both [1] - 6:2 both [2] - 2:7, 6:21 bridge [1] - 2:21 But [1] - 3:17 but [3] - 4:7, 4:21, 6:15 BY [3] - 1:17, 1:21, 8:20 by [4] - 1:24, 1:24, 6:7, 8:11 Bye [1] - 7:8	B	clients [1] - 6:4 come [1] - 2:21 comes [1] - 4:16 coming [1] - 6:9 commencement [1] - 5:2 commences [1] - 7:10 concern [1] - 5:5 concerns [1] - 5:2 concluded [1] - 4:21 CONFERENCE [1] - 1:7 conference [2] - 2:8, 2:9 conferred [1] - 2:14 consider [2] - 3:11, 3:25 consult [1] - 7:1 contemplate [1] - 6:15 context [1] - 4:18 could [1] - 5:8 Counsel [1] - 1:15 COUNTY [1] - 8:3 COURT [1] - 1:1 Court [6] - 1:23, 1:24, 3:23, 5:23, 6:16, 7:3 cross [1] - 2:20
2	E	E [7] - 1:10, 1:13, 8:1, 8:21 E-MAIL [1] - 8:21 East [1] - 1:19 effectively [1] - 4:9 electronic [1] - 8:9 Electronic [1] - 1:24 else [3] - 4:15, 4:20, 5:14 enter [2] - 3:7, 3:10 ESQ [2] - 1:17, 1:21 established [1] - 5:11 et [1] - 1:4 event [1] - 4:2 ever [1] - 2:21 everything [4] - 3:14, 4:15, 4:19, 5:14 Evidence [1] - 1:8	F	F [2] - 1:10, 8:1 face [1] - 4:10 File [1] - 6:21 FILE [1] - 8:20 filed [3] - 1:8, 3:16, 6:12
3	D	damage [3] - 4:13, 5:11, 5:18 day [3] - 7:7, 8:10, 8:15		
4				
5				
6				
7				
8				
9				
A				
a [23] - 2:8, 2:9, 2:22, 2:23, 3:12, 3:16, 4:3,				

finality [1] - 2:13 fine [1] - 3:3 first [2] - 2:11, 7:1 FOLEY [1] - 1:18 follow [1] - 2:8 follow-up [1] - 2:8 For [1] - 1:8 for [8] - 1:15, 1:19, 3:12, 4:22, 5:12, 5:19, 6:3, 8:6 forward [1] - 4:20 from [5] - 1:8, 2:11, 6:5, 7:12, 8:9 fully [1] - 5:10 further [1] - 8:11 future [1] - 4:3	Honor [11] - 2:3, 2:5, 2:12, 3:1, 3:9, 3:21, 5:15, 5:21, 6:8, 6:24, 7:6 Honor's [1] - 5:24 HONORABLE [1] - 1:11 How [1] - 5:8 how [1] - 2:9 HUNTSMAN [4] - 1:23, 8:5, 8:18, 8:19	It [6] - 2:12, 3:24, 4:15, 5:12, 5:17 it's [1] - 4:17 itself [1] - 5:14	J J [1] - 1:11 JILL [1] - 1:21 Jill [4] - 2:5, 3:1, 3:21, 6:24 Judge [3] - 1:12, 2:2, 4:23 JUDGE [12] - 2:1, 2:7, 2:25, 3:5, 4:6, 5:7, 5:17, 6:2, 6:20, 7:2, 7:7, 7:9 judgement [1] - 2:18 judgment [3] - 3:14, 3:17, 5:4 July [3] - 1:4, 8:10, 8:15 just [6] - 4:3, 4:4, 4:20, 5:15, 6:25, 7:3	O O [1] - 1:10 object [1] - 3:17 objection [8] - 2:16, 2:18, 2:24, 3:7, 3:20, 5:17, 6:13, 6:19 OF [3] - 1:2, 8:2, 8:3 of [35] - 1:7, 1:8, 2:3, 2:5, 2:17, 2:19, 2:23, 3:2, 3:10, 3:13, 3:16, 3:22, 4:18, 4:24, 5:2, 5:4, 5:18, 5:22, 5:23, 6:3, 6:10, 6:11, 6:13, 6:18, 6:19, 6:21, 7:3, 8:6, 8:9, 8:10, 8:12, 8:13, 8:15 offer [1] - 3:13 official [1] - 8:9 on [17] - 2:3, 2:5, 2:8, 3:1, 3:16, 3:21, 3:23, 4:4, 4:10, 4:16, 4:25, 5:3, 5:5, 5:9, 5:16, 6:9, 8:10 once [1] - 5:14 Once [1] - 5:17 one [3] - 4:24, 5:2, 6:22 ones [1] - 6:12 only [3] - 3:15, 3:18, 3:22 open [3] - 5:9, 6:7, 6:11 opens [1] - 5:14 opinion [3] - 4:9, 5:20, 5:24 Opposition [1] - 1:8 or [3] - 3:13, 3:23, 8:12 order [9] - 3:7, 3:10, 4:8, 5:22, 6:12, 6:16, 6:18 other [1] - 6:17 otherwise [1] - 3:15 our [1] - 6:10 out [6] - 2:22, 5:21, 6:2, 6:14, 6:25, 7:4 outcome [1] - 8:13 over [2] - 5:12
G gave [1] - 2:16 gets [1] - 4:12 glad [1] - 5:21 go [2] - 2:11, 3:3 goes [1] - 4:15 going [2] - 2:9, 2:10 GONZALEZ [13] - 1:11, 2:1, 2:7, 2:25, 3:5, 4:6, 5:7, 5:17, 6:2, 6:20, 7:5, 7:7, 7:9 Gonzalez [1] - 2:2 Good [1] - 7:7 granted [2] - 3:20, 6:13 granting [1] - 6:19	I [31] - 2:14, 3:5, 3:7, 3:10, 3:14, 3:18, 4:7, 4:14, 4:19, 4:23, 5:7, 5:8, 5:9, 5:21, 6:3, 6:8, 6:15, 6:20, 6:24, 6:25, 7:1, 7:3, 7:10, 8:1, 8:5, 8:11, 8:12, 8:14 I'll [1] - 2:11 I'm [1] - 3:1 if [12] - 2:9, 2:21, 3:6, 3:19, 4:3, 4:14, 4:15, 4:17, 4:21, 4:24, 5:24, 6:12 If [6] - 2:18, 3:3, 3:9, 4:12, 5:23, 6:5 IN [1] - 8:14 In [1] - 1:3 in [9] - 4:2, 4:9, 4:18, 6:3, 6:18, 6:21, 7:9, 8:13 INC [1] - 1:4 Inc [1] - 1:8 including [2] - 6:11, 6:17 intention [1] - 2:13 interested [1] - 8:12 interests [1] - 6:4 Intermedia [1] - 1:15 is [31] - 2:2, 2:18, 2:19, 3:3, 3:15, 3:16, 3:21, 3:22, 3:24, 3:25, 4:3, 4:6, 4:8, 4:21, 4:25, 5:4, 5:8, 5:11, 5:12, 5:17, 5:18, 5:19, 5:20, 5:24, 6:6, 6:10, 6:12, 6:24, 8:8 isn't [1] - 4:20 issue [1] - 5:1 issues [5] - 2:13, 4:9, 4:17, 5:23, 6:22 it [14] - 2:21, 3:6, 3:25, 4:6, 4:7, 4:16, 4:18, 4:20, 5:7, 5:13, 5:23, 6:2, 6:20	Kansas [1] - 1:16 keep [2] - 2:7, 6:3 keeping [1] - 6:7 know [1] - 6:3	K language [2] - 2:16, 2:22 LARDNER [1] - 1:18 least [1] - 4:10 left [5] - 3:15, 3:18, 5:8, 5:19, 6:6 liability [2] - 5:11, 5:12 light [1] - 6:18 like [2] - 4:23, 4:25 little [1] - 7:3 LLP [2] - 1:14, 1:18 look [1] - 6:5	L language [2] - 2:16, 2:22 LARDNER [1] - 1:18 least [1] - 4:10 left [5] - 3:15, 3:18, 5:8, 5:19, 6:6 liability [2] - 5:11, 5:12 light [1] - 6:18 like [2] - 4:23, 4:25 little [1] - 7:3 LLP [2] - 1:14, 1:18 look [1] - 6:5
H had [1] - 5:3 hammer [1] - 7:4 hand [1] - 8:14 happens [1] - 5:14 has [1] - 5:10 have [21] - 2:14, 2:19, 2:20, 2:23, 3:4, 3:7, 3:16, 4:1, 4:9, 4:10, 4:11, 4:13, 5:5, 5:9, 6:5, 6:9, 6:10, 6:12, 6:15, 6:25, 8:14 hear [1] - 2:11 hearing [1] - 6:22 HECKER [1] - 1:14 held [1] - 8:10 here [3] - 2:8, 3:1, 6:25 hereby [1] - 8:6 hereunto [1] - 8:14 hold [1] - 4:4 Holdings [9] - 1:7, 1:19, 2:6, 2:25, 3:2,	INC [1] - 1:4 Inc [1] - 1:8 including [2] - 6:11, 6:17 intention [1] - 2:13 interested [1] - 8:12 interests [1] - 6:4 Intermedia [1] - 1:15 is [31] - 2:2, 2:18, 2:19, 3:3, 3:15, 3:16, 3:21, 3:22, 3:24, 3:25, 4:3, 4:6, 4:8, 4:21, 4:25, 5:4, 5:8, 5:11, 5:12, 5:17, 5:18, 5:19, 5:20, 5:24, 6:6, 6:10, 6:12, 6:24, 8:8 isn't [1] - 4:20 issue [1] - 5:1 issues [5] - 2:13, 4:9, 4:17, 5:23, 6:22 it [14] - 2:21, 3:6, 3:25, 4:6, 4:7, 4:16, 4:18, 4:20, 5:7, 5:13, 5:23, 6:2, 6:20	MAIL [1] - 8:21 make [2] - 3:13, 5:7 marriage [1] - 8:12 matter [2] - 7:9, 8:13 may [1] - 4:2 Maybe [1] - 4:6 me [8] - 4:7, 4:15,	N N [1] - 1:13 need [3] - 3:11, 3:15, 7:3 new [1] - 4:18 NEW [3] - 1:2, 8:2, 8:3 New [3] - 1:4, 8:6 next [1] - 7:9 no [3] - 3:4, 3:7, 3:11 No [1] - 1:2 not [6] - 2:12, 3:23, 4:4, 5:3, 8:11, 8:12 Notary [1] - 8:6 NOTE [1] - 8:20 nothing [3] - 5:8, 5:19, 6:6 notice [1] - 3:16 now [1] - 2:23	P P [2] - 1:13 p.m [2] - 7:10, 7:12 part [1] - 2:19 partial [2] - 6:13, 6:19 partially [2] - 2:15, 3:19

parties [1] - 8:12 Parus [11] - 1:7, 1:19, 2:5, 2:25, 3:2, 3:6, 3:17, 3:22, 3:25, 5:25, 6:14 pause [1] - 2:16 pending [6] - 3:11, 4:4, 5:16, 6:11, 6:17, 6:18 permission [1] - 2:15 permitting [1] - 6:13 person [1] - 6:21 Please [1] - 2:1 point [2] - 3:24, 5:6 practical [1] - 6:5 PRELIMINARY [1] - 8:21 premature [1] - 3:25 present [2] - 5:23, 6:16 presentment [1] - 3:16 preserve [3] - 4:23, 5:1, 5:15 preserving [1] - 6:7 prior [1] - 5:3 problem [1] - 3:4 procedurally [1] - 6:15 proceed [2] - 2:9, 2:10 PROCEEDINGS [1] - 1:6 Proceedings [1] - 1:24 proceedings [1] - 8:10 process [1] - 4:21 Produced [1] - 1:24 protecting [1] - 6:4 provides [1] - 6:16 Public [1] - 8:6 purpose [1] - 6:10	Recording [1] - 1:24 refile [3] - 2:17, 2:24, 5:25 regarding [1] - 4:9 related [1] - 8:11 relatively [1] - 4:7 relevant [1] - 4:17 Relief [1] - 1:8 remand [2] - 4:16, 4:22 remove [1] - 2:16 Reorganized [2] - 1:5, 1:15 Reporter [3] - 1:23, 1:24, 8:5 request [2] - 3:12, 3:13 reservation [2] - 2:17, 2:23 resolution [1] - 7:2 resolve [3] - 3:14, 4:8, 5:23 resolved [2] - 3:19, 4:10 respect [2] - 2:13, 2:17 Resulting [1] - 1:8 return [1] - 7:10 reversal [3] - 4:3, 4:16, 4:22 reversed [2] - 5:20, 5:25 right [8] - 2:7, 2:25, 3:5, 4:13, 6:2, 7:5, 7:7, 7:9 rightfully [1] - 6:4 rights [6] - 2:17, 2:20, 2:23, 4:1, 4:11, 6:6 road [1] - 6:9 rule [2] - 3:23, 4:4 Rule [1] - 3:12 ruled [2] - 5:3, 5:5 ruling [4] - 2:18, 3:17, 4:25, 5:16	sense [1] - 5:8 sent [2] - 2:19, 4:12 set [1] - 8:14 Shorthand [1] - 8:5 show [1] - 3:6 so [2] - 6:4, 6:10 So [3] - 2:11, 4:2, 5:4 some [1] - 4:13 someone [1] - 5:13 something [3] - 5:10, 6:14, 6:25 Sorry [1] - 2:7 sound [1] - 8:9 Sound [1] - 1:24 SOUTHERN [1] - 1:2 Special [1] - 1:15 spoliation [12] - 2:10, 3:12, 3:23, 3:24, 4:14, 4:18, 4:19, 4:25, 5:3, 5:16, 5:19, 6:1 Spoilation [1] - 1:8 SS [1] - 8:2 standpoint [1] - 6:5 STATE [1] - 8:2 State [1] - 8:6 STATES [1] - 1:1 States [1] - 1:12 status [1] - 2:9 STATUS [1] - 1:7 still [2] - 3:18, 6:5 STINSON [1] - 1:14 Street [1] - 1:16 suggest [1] - 3:6 summary [3] - 2:18, 3:17, 5:4	7:4, 7:11, 8:11, 8:12 That [2] - 3:3, 8:8 The [3] - 3:15, 3:22, 7:9 the [71] - 1:8, 2:4, 2:8, 2:10, 2:11, 2:16, 2:17, 2:18, 2:19, 2:22, 3:3, 3:5, 3:8, 3:11, 3:17, 3:18, 3:19, 3:22, 3:23, 4:2, 4:8, 4:9, 4:10, 4:12, 4:13, 4:14, 4:18, 4:19, 4:21, 4:23, 4:24, 5:2, 5:4, 5:10, 5:16, 5:17, 5:18, 5:19, 5:22, 5:23, 5:25, 6:9, 6:10, 6:12, 6:13, 6:15, 6:16, 6:19, 6:21, 6:22, 7:1, 7:2, 7:3, 7:11, 8:6, 8:8, 8:9, 8:10, 8:12, 8:13 THE [1] - 1:11 their [4] - 2:14, 2:15, 4:10, 6:4 them [2] - 4:4, 4:14 then [7] - 2:19, 3:8, 3:10, 4:14, 4:17, 5:13, 5:25 there [6] - 4:2, 4:3, 4:8, 5:11, 5:19, 6:6 There [3] - 3:11, 5:8, 5:11 these [2] - 5:23, 6:17 they [5] - 2:20, 2:23, 3:6, 4:1, 4:13 thing [3] - 3:15, 3:18, 3:22 think [3] - 3:10, 3:14, 4:6 This [1] - 2:2 this [11] - 2:21, 3:21, 3:24, 4:5, 5:6, 6:5, 6:9, 6:24, 8:13, 8:15 those [3] - 3:11, 4:4, 6:11 time [7] - 2:20, 2:21, 3:24, 4:5, 6:1, 7:3, 7:11 to [55] - 2:7, 2:8, 2:9, 2:10, 2:13, 2:15, 2:16, 2:17, 2:21, 2:22, 2:24, 3:3, 3:6, 3:7, 3:11, 3:13, 3:15, 3:18, 3:19, 4:7, 4:8, 4:13, 4:14, 4:15, 4:16, 4:17, 4:23, 4:24, 4:25, 5:3, 5:8, 5:13, 5:15, 5:17, 5:21, 5:23, 5:24, 5:25, 6:2, 6:5, 6:14, 6:16, 6:21, 6:25, 7:1, 7:3, 7:10, 7:12, 8:12	transcript [1] - 8:9 Transcript [1] - 1:24 true [1] - 8:8 Try [1] - 6:2 try [1] - 6:14
Q		T		
quickly [1] - 4:8	S			
R				
				3

6:14, 6:20, 7:1, 7:2
withdraw [3] - 2:15,
3:19, 6:21
withdrawal [3] - 3:7,
6:13, 6:19
withdrawing [1] -
6:10
withdrawn [2] - 4:20,
5:18
within [2] - 8:6, 8:8
WITNESS [1] - 8:14
work [4] - 5:21, 6:2,
6:14, 6:25
WORLDCOM [1] -
1:4
WorldCom [3] - 1:15,
4:12, 7:10
would [17] - 2:23,
3:6, 3:11, 3:14, 3:15,
3:18, 4:3, 4:18, 4:20,
4:23, 4:25, 5:3, 5:5,
5:21, 5:22, 5:25
wrong [1] - 5:13

X

x [2] - 1:2, 1:5

Y

YORK [3] - 1:2, 8:2,
8:3
York [3] - 1:4, 8:6
you [18] - 2:7, 2:16,
3:6, 3:25, 4:3, 4:9,
4:10, 4:11, 4:18, 5:13,
6:3, 6:4, 6:6, 6:21,
7:5, 7:6, 7:8
your [1] - 6:3
Your [12] - 2:3, 2:5,
2:12, 3:1, 3:9, 3:21,
5:15, 5:21, 5:24, 6:8,
6:24, 7:6